

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

IN RE:)	
)	
DAVID NORMAN SPECYAL,)	CASE NO. 00-63124 JPK
)	Chapter 7
Debtor.)	
*****)	
BELINDA J. SPECYAL,)	
)	
Plaintiff,)	
)	
v.)	ADVERSARY NO. 01-6071
)	
DAVID NORMAN SPECYAL,)	
)	
Defendant.)	

ORDER DENYING MOTION TO DISMISS

On November 21, 2005, the defendant, by counsel, filed a Motion for Dismissal of Adversary Proceeding. The plaintiff, by counsel, filed a Response to this motion on November 21, 2005.

The defendant's motion requests dismissal of the adversary proceeding pursuant to Fed.R.Bankr.P. 7041/Fed.R.Civ.P. 41(b). The premise for the dismissal is the Court's order entered on April 6, 2005, which required the plaintiff to file a copy of an order to be entered by the Honorable Charlotte Ann Peller, Special Judge, in the parties' state court action for dissolution of their marriage – within 10 days of the entry of that order by Special Judge Peller. The defendant's motion asserts that the order was entered on June 21, 2005, and that the adversary proceeding should be dismissed due to the plaintiff's delay in filing the order as required by the April 6, 2005 order.

The sanction of dismissal of a case pursuant to Rule 41(b) is an extreme action. As stated in *Maynard v. Nygren*, 332 F.3d 462, 467 (7th Cir. 2003):

Of all possible sanctions, dismissal is considered "draconian," and we must be "vigilant" in our review. *Marrocco v. Gen. Motors Corp.*,

966 F.2d 220, 223-24 (7th Cir.1992). Because of its severity, we have circumscribed the range of cases in which dismissal may be used as a sanction. Looking at the case law, we find two different standards for determining whether a case can properly be dismissed. Some of our cases have held that actions can be dismissed "when there is a clear record of delay or contumacious conduct, or when other less drastic sanctions have proven unavailing." *Williams v. Chicago Bd. of Educ.*, 155 F.3d 853, 857 (7th Cir.1998); *Schilling v. Walworth County Park & Planning Com'n*, 805 F.2d 272, 278 (7th Cir.1986). This appears to be the standard used when cases are dismissed for want of prosecution or failure to comply with orders of the court, Fed.R.Civ.P. 41(b).

The requirement that dismissal be imposed only in response to a pattern of dilatory or contumacious conduct had been previously stated in *Dickerson v. Board of Education of Ford Heights*, 32 F.3d 1114, 1116-17 (7th Cir. 1994), as follows:

"It is well-established that district courts possess inherent authority to dismiss a case *sua sponte* for a plaintiff's failure to prosecute." *GCIU Employer Retirement Fund v. Chicago Tribune Co.*, 8 F.3d 1195, 1199 (7th Cir.1993) (citing *Link v. Wabash R.R. Co.*, 370 U.S. 626, 82 S.Ct. 1386, 8 L.Ed.2d 734 (1962)). A court is permitted to infer a lack of intent to prosecute a case from a pattern of failure to meet court-imposed deadlines. *See id.*; *Pyramid Energy, Ltd. v. Heyl & Patterson, Inc.*, 869 F.2d 1058, 1061-62 (7th Cir.1989). Where the pattern of dilatory conduct is clear, dismissal need not be preceded by the imposition of less severe sanctions. *See Ball v. City of Chicago*, 2 F.3d 752, 760 (7th Cir.1993); *Pyramid Energy*, 869 F.2d at 1062.

In the instant case, there is no pattern of delay or contumacious conduct: although this adversary proceeding was commenced on April 6, 2001 and has yet to be concluded, the delay in its completion is attributable to this Court's abstention from entering a final decision until the issues before the Court had been clarified by the state court in which the parties' underlying decree of dissolution of marriage had been entered. The defendant has pointed to no prejudice which has been visited upon him by the delay in filing the order, and in fact in terms of the actual processing of this case by the Court, there hasn't been any: the Court would not have held the trial by this time, anyway, due to the press of other matters on its docket. It is also interesting to note – as the plaintiff points out – that although the plaintiff was ordered by the Court to file the order, the

defendant was perfectly capable of filing the order himself if he wanted to expedite the determination of the case, a point highlighted by the fact that the defendant's motion includes a copy of Special Judge Peller's order.

IT IS ORDERED that the defendant's Motion for Dismissal of Adversary Proceeding is denied.

IT IS FURTHER ORDERED that a telephonic pre-trial conference will be held on **January 25, 2006, at 10:30 A.M.** to schedule the trial in this adversary proceeding.

Dated at Hammond, Indiana on December 22, 2005.

/s/ J. Philip Klingeberger
J. Philip Klingeberger, Judge
United States Bankruptcy Court

Distribution:
Attorneys of Record